

ANALYSIS OF ORIGINAL BILL

Author: Migden Analyst: Gloria McConnell Bill Number: AB 1752
 Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 01/07/02
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records/BOE Distribution of Public Records

SUMMARY

This bill would require the Board of Equalization (BOE) to make additional disclosures of public records before taking final action on any item at its public meetings.

PURPOSE OF THE BILL

The purpose of this bill is to ensure that the public receives information relating to decisions made at BOE meetings.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2003.

POSITION

Pending.

LEGISLATIVE HISTORY

SB 445 (Burton; Stats. 2001, Ch. 670) added the provisions this bill proposes to amend. Those provisions are applicable only to the Franchise Tax Board (FTB). This law, effective January 1, 2002, is further explained under "State Law."

PROGRAM BACKGROUND

Background information about the processes affected by this bill is attached.

ANALYSISSTATE LAW

Under current law, any disclosable public records distributed to members of state bodies, which includes BOE or FTB, prior to or during an open public meeting must be made available for public inspection *at* the meeting. If the writing is prepared by other than the state body or a member thereof, it must be made available for public inspection upon request *after* the meeting.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

2/19/02

Effective January 1, 2002, SB 445 generally requires that disclosable public records distributed to FTB members prior to or during a FTB meeting at which final action is to be taken must be disseminated in three ways before FTB takes any final action on that item. The public records must be: (1) made available for public inspection at that meeting, (2) distributed to all persons requesting notice of FTB meetings, and (3) made available on the Internet.

THIS BILL

This bill generally would require that disclosable public records distributed to BOE members be disseminated in three ways before BOE takes any final action on the item to which the writing pertains. The public records must be: (1) made available for public inspection at the meeting, (2) distributed to all persons requesting notice of its meeting, and (3) made available on the Internet. This bill could be interpreted to require BOE to disseminate disclosable documents relating to tax appeals, namely briefs and supporting evidence, before making a decision on an income¹ tax appeal.

IMPLEMENTATION CONSIDERATIONS

FTB staff is uncertain how BOE would incorporate the provisions of this bill into the income tax appeal proceedings. However, FTB staff anticipates that resolution of these appeals would be delayed.

FTB's implementation of provisions of SB 445 with respect to the FTB may affect the application of those same provisions as they pertain to BOE. These implementation considerations will be provided in future bill analyses, as appropriate.

OTHER STATES' INFORMATION

A search was made of the tax laws of six of the larger states: *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. However, for these states, their taxing authority is a department within state government and would not meet the definition of a state body to which an open meeting act would apply. Therefore, a meaningful comparison cannot be made.

FISCAL IMPACT

This bill should not significantly impact FTB's departmental costs.

ECONOMIC IMPACT

No identifiable revenue impact would be attributable to this bill.

¹ In this analysis "income" tax includes income taxes of individuals and the income and franchise taxes of corporations.

POLICY CONCERNS

- This bill would have a different affect on income taxpayers than contemplated by SB 445 because the BOE is the state body that acts in an administrative appellate capacity with respect to taxpayer appeals from actions taken by FTB. As a result, writings pertaining to income tax appeals, namely briefs and supporting evidence, would be subject to dissemination under this bill. Routinely disseminating these disclosable tax appeal documents on the Internet or mailing them to people requesting notice of an upcoming BOE meeting may be of concern to income taxpayers for the following reasons:
 1. Typically, income tax appeal documents are requested only by persons in the tax industry or persons in a similar tax-related situation. Posting these tax documents on the Internet would subject these documents, which may include a taxpayer's personal or financial information, to browsing by the general public². Given the amount of personal or financial information that may be present in supporting evidence, posting this information on the Internet could aid in identity theft.
 2. An income tax appeal case heard by the BOE is comparable to a civil or criminal matter in Superior Court. All documents filed with the court are not posted on the Internet or mailed to interested parties before the court makes a decision on a case. It is unclear why income tax appeal matters should bear a greater level of general public disclosure than a civil or criminal legal matter.
 3. Requiring the posting of tax appeal documents on the Internet may discourage taxpayers from pursuing their tax protest and appeal rights. Most taxpayers would not want these tax appeal documents posted on the Internet for browsing by the general public, especially if dissemination of these documents could heighten the chances of identity theft or result in a substantial invasion of privacy.
 4. A third-party (unrelated to the tax matter) could postpone or prevent a BOE decision on an income tax appeal merely by having the third-party's written comments distributed to BOE members before or during the tax appeal hearing. Once the third-party's writings are distributed to BOE members, BOE would have to delay making its decision on the tax appeal case until the writings were disseminated.
- Delays in a BOE decision on an income tax appeal case would cause interest to accrue on an NPA or refund during the period the decision is delayed.

LEGISLATIVE STAFF CONTACT

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² As described in the Appendix, tax appeal documents may include cancelled checks, invoices or purchase orders with credit card numbers, social security numbers, names and other information of children and other family members, vehicle registration records, expense records, and employment tax records.

PROGRAM BACKGROUND

FTB administers the Personal Income Tax Law and Corporate Tax Law. Taxpayer information relative to these laws, including income tax records and related information, is generally confidential. Decisions by FTB staff or the FTB, itself, relating to these income tax matters are administrative matters and may also be confidential. Any income tax matter requiring a decision by the FTB, itself, is decided at a meeting under the Open Meeting Act. Some occur in a session closed to the public. The details of the income tax matters discussed in closed session, tax records, and any supporting evidence or other documentation, are not disclosable to the public.

When FTB staff determines that the tax is more than the amount of tax determined to be due by the taxpayer, FTB issues a notice of proposed deficiency assessment (NPA). If the taxpayer protests the proposed assessment, the FTB may deny the protest. Similarly, if a taxpayer files a claim for a refund of overpaid taxes, the FTB may deny the claim for refund. If a taxpayer appeals FTB's action on the protest or refund, the tax appeal is filed with the BOE. Upon the filing of the appeal, the taxpayer and FTB staff have an opportunity to file briefs with supporting evidence and other documents (tax appeal documents) explaining their respective positions. Frequently, the tax appeal documents, and especially the supporting documents, contain personal or financial taxpayer information, e.g. cancelled checks, invoices or purchase orders with credit card numbers, social security numbers, names of children and other family members, vehicle registration records, expense records, and employment tax records. BOE staff distributes the tax appeal documents with its recommendation on the case to BOE members for consideration. During the tax appeal hearing, the taxpayer or FTB may provide BOE members additional tax appeal documents to support their positions. BOE hearings are open to the public. Under current law, tax return and return information may be disclosed in an administrative proceeding relating to tax administration, including appeals before the BOE. In addition, documents related to tax appeals before the BOE are public records. Consequently, tax appeal documents are disclosable to the public upon request.

After a final BOE decision, the BOE issues Formal Opinions that provide the public with the facts of the case and the decision. Formal Opinions are also posted on the Internet, but do not contain the same level of personal or financial information that may be included in the tax appeal documents. BOE also issues decisions that, although denominated as unpublished decisions, are published by commercial publishers. Unpublished decisions may not be cited as precedent. Taxpayers can look to all of these opinions to determine BOE's position on a particular legal issue.